

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

STAFFORD BERRIAN,

Plaintiff,

-against-

STIPULATION OF  
SETTLEMENT  
AS TO ATTORNEYS' FEES,  
EXPENSES AND COSTS FOR  
"FEES ON FEES"

CITY OF NEW YORK; Commissioner DORA B.  
SCHRIRO; Chief of Department MICHAEL  
HOURIHANE; Deputy Commissioner FLORENCE L.  
FINKLE; Warden LUIS RIVERA; Captain "JANE"  
COUNCIL; Captain "JOHN" MEDINA; Officer "JOHN"  
PEPE; Officer "JOHN" DEJESUS; and Officer "JOHN"  
ELLIS,

13 CV 1719 (DLC)(DLF)

Defendants.

**WHEREAS**, Plaintiff commenced this action by filing a Complaint on or about March 14, 2013, alleging that the Defendants violated Plaintiff's federal civil and state common law rights; and

**WHEREAS**, Defendants City of New York ("City"), Dora Schriro, Michael Hourihane, Florence Finkle, Luis Rivera, Chereese Council, Diane Medina, Robert Pepe, David DeJesus, and Chad Ellis, have denied any and all liability arising out of Plaintiff's allegations; and

**WHEREAS**, Defendant City of New York served Plaintiff with an Offer of Judgment pursuant to Fed. R. Civ. P. 68 on February 14, 2014; and

**WHEREAS**, Plaintiff accepted Defendant's Rule 68 Offer of Judgment on February 18, 2014; and

**WHEREAS**, on March 25, 2014, Plaintiff's counsel moved for attorneys' fees and costs; and

**WHEREAS**, on July 28, 2014, Magistrate Judge Freeman filed a Report and Recommendation awarding Plaintiff's counsel fees and costs; and

**WHEREAS**, on August 8, 2014, Defendants filed their objections to Magistrate Judge Freeman's Report and Recommendation; and

**WHEREAS**, on November 21, 2014, an Opinion and Order was entered awarding Plaintiff's counsel attorneys' fees and costs incurred prior to their acceptance of the Rule 68 Offer of Judgment;

**WHEREAS**, Plaintiff's counsel Emery Celli Brinckerhoff & Abady LLP ("Emery Celli") expressed their intent to seek "fees on fees" for the time spent litigating their application for attorneys' fees and costs; and

**WHEREAS**, Plaintiff Stafford Berrian has assigned his rights to attorneys' fees, costs and expenses to Emery Celli; and

**WHEREAS**, the parties now desire to resolve the issue of attorneys' fees, expenses and costs for "fees on fees," without further proceedings and without admitting any fault or liability; and

**WHEREAS**, Plaintiff has authorized his counsel to settle this matter on the terms set forth below;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned, as follows:

1. Defendant City of New York hereby agrees to pay Plaintiff's counsel Emery Celli the sum of Twenty Thousand (\$20,000.00) Dollars in full satisfaction of claims for attorneys' fees, costs and expenses for "fees on fees" in the above-captioned action.

2. In consideration for the payment of Twenty Thousand (\$20,000.00) Dollars to Plaintiff's counsel, Plaintiff and counsel for Plaintiff agree to dismissal of all the claims against the Defendants for attorneys' fees, costs and expenses for "fees on fees" in the above-captioned action and to release the Defendants and any present or former employees and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all claims for costs, expenses, and attorneys' fees for "fees on fees."

3. Payment of the aforementioned sum shall be made by check payable to "Emery Celli Brinckerhoff & Abady LLP."

4. Plaintiffs' counsel and Defendants agree that payment by check by Defendant City of New York to Emery Celli within ninety (90) days of the date of the execution of this stipulation by all parties shall be a reasonable time for such payment.

5. Plaintiffs' counsel shall execute and deliver to Defendant City of New York's attorney all documents necessary to effect this settlement, including, without limitation, a Release based on the terms of paragraph 2 above.

6. Nothing contained herein shall be deemed to be an admission by the Defendants that they have in any manner or way violated Plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules or regulations of any department or subdivision of the City of New York. Nothing in this Stipulation shall be deemed to be an admission by the Defendants that the Plaintiff is entitled to

recover "fees on fees" or to recover any other compensation purportedly for attorney's fees in this matter. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations, except to enforce the terms of this agreement.

7. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.

8. The parties agree that facsimile or electronic copies of signatures are equivalent to originals.

9. This Stipulation of Settlement contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation of Settlement regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

*{Signatures on following page}*

Dated: New York, New York  
January 9, 2015

Emery Celli Brinckerhoff & Abady LLP  
Attorneys for Plaintiff  
600 Fifth Avenue at Rockefeller Center, 10<sup>th</sup>  
Floor  
New York, New York 10020

By: 

Debra L. Greenberger  
Attorney for Plaintiff

ZACHARY W. CARTER  
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By: 

Odile M. Farrell  
Assistant Corporation Counsel